

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO: 1139 of 1997

Between:

P.Sateesh, S/o. P.Prasad Rao.
R/o. H.No.G-1, Type-III, Central Revenue Quarters, Daba Gardens,
Visakhapatnam-530 020.

..... PETITIONER

AND

Visakhapatnam Steel Plant, Rep. Chief Superintendent (CME).
Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction especially one in the nature of writ of Certiorari to call for the records relating to and connected with Procs. No. WK/CME/469 dated 20/01/1994 of the respondent herein and quash or set aside the same with all consequential benefits.

Counsel for the Petitioner: MR.P.NAVEEN RAO

Counsel for the Respondent: MR. V.RAVINDER RAO

The Court made the following:

ORDER:

Heard both sides.

The petitioner who was an employee with the respondent filed this writ petition, *inter alia*, seeking a Writ of Mandamus challenging the order dated 20-01-1994 passed by the respondent, whereunder the petitioner's services were sought to be terminated on the ground of his unauthorised absence.

The case of the petitioner, in brief, is that initially he was appointed as a Junior Trainee on 20-07-1988 in the respondent-Steel Plant and was promoted as a Technician on 23-01-1990. Thereafter, from 06-01-1993 to 02-03-1993, he was absent from duty and joined duty on 03-03-1993. Subsequently, from 06-03-1993 he was again absent. Accordingly a charge sheet was issued calling upon him to submit explanation for such unauthorised absence and ultimately, an enquiry officer was appointed on 06-08-1993. During the enquiry, the petitioner did not participate in spite of repeated adjournments and ultimately the impugned order was passed on 20-01-1994 terminating his services for such unauthorised absence. It was also pointed out that the petitioner has already filed several representations in the form of appeal for consideration of his case from mercy angle. However, no orders have been passed. Hence, the writ petition.

The learned counsel for the petitioner submits that admittedly the entire proceedings are *ex parte* in nature and there was no proper enquiry in the presence of the petitioner and, therefore, the entire enquiry is vitiated. He further submitted that the report of the enquiry was not served on the petitioner, which is fatal and as such, the impugned order is liable to be set aside.

The learned counsel for the respondent sought to sustain the impugned order on the ground that all along the petitioner was not diligent in filing any explanation or participating in the enquiry in spite of giving several opportunities. No explanation is forthcoming and there is no denial on behalf of the petitioner as to his absence. The allegation is only with regard to the unauthorised absence. Hence, the petitioner cannot claim any prejudice as such for non supply of the enquiry report and, therefore, the same is not fatal.

Considering the submissions made and on perusal of material on record, the question that falls for consideration is as to whether the impugned order is vitiated due to non provision of opportunity to the petitioner.

There is no dispute in regard to the fact that the petitioner is the employee with the respondent and admittedly he was absent from duties from 06-01-1993 to 02-03-1993 and from 06-03-1993 onwards. To the charge sheet issued on 12-05-1993, admittedly the petitioner has not filed any explanation. During the enquiry, though the matter was posted on more than one occasion, there was no cooperation from the petitioner's side and ultimately, on the basis of the report submitted by the enquiry officer, the impugned order is passed. During the course of arguments, the learned counsel for the petitioner submitted that in fact the absence of the petitioner was due to the fact that he got married which was not to the liking of his elders and therefore, he could not possibly attend to the duties. It is seen from the record that this plea is taken for the first time in the reply affidavit filed in this writ petition. Even in the main affidavit filed in support of the writ petition, no such averment has been made. However, it is contended on behalf of the petitioner that in the representation/appeal filed by the petitioner through his father, the said fact was mentioned. Be that as it may, the fact remains that the said allegation of marriage is only a subsequent thought, which is sought to be introduced by the petitioner at a very late hour. Nothing stopped him from coming out with such a plea either by way of explanation or during the enquiry. The very fact that he has not filed any explanation from the inception nor participated in the enquiry shows that the petitioner is not serious in pursuing the proceedings. In the circumstances, it is not open to the petitioner to come out with such a plea at this late hour.

Having taken into consideration the totality of the facts and circumstances of the case, I am of the view that the petitioner is not entitled to any indulgence as such to claim any participation once again in the enquiry on the ground of lack of opportunity. Hence, I do

not find any merits in the writ petition and the same is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

(B. PRAKASH RAO, J)

Date: 25-11-2004

ghn

To

1. The Chief Superintendent (CME),
Visakhapatnam Steel Plant, Visakhapatnam.
- 2 Two C.D. Copies.

